

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: BRIAN J. MASSEY,

Petitioner,

v.

COMMONWEALTH OF
PENNSYLVANIA,

Respondent.

Civil Action No. 08-94 Erie

MEMORANDUM ORDER

This case was commenced on April 4, 2008 when the Petitioner filed a *pro se* "Petition for writ of Prohibition." The matter was thereafter referred to Chief United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Chief Magistrate Judge's Report and Recommendation, filed on November 20, 2008 [7], recommends that the action be dismissed in accordance with 28 U.S.C. § 1915(e) for lack of subject matter jurisdiction. The parties were allowed ten (10) days from the date of service in which to file objections. Service was made on Petitioner by certified mail at SCI Albion, where he is incarcerated. Objections were filed by Petitioner on December 8, 2008 [8]. After de novo review of the petition and documents in the case, together with the Report and Recommendation and Petitioner's objections thereto, the following order is entered:

AND NOW, this 28th day of April, 2009;

IT IS HEREBY ORDERED that the within action be, and hereby is,
DISMISSED in accordance with 28 U.S.C. § 1915(e) for lack of subject matter jurisdiction.

The Report and Recommendation of Chief Magistrate Judge Baxter,
dated November 20, 2008 [7], is adopted as the opinion of the Court.

/s Sean J. McLaughlin
 SEAN J. McLAUGHLIN
 United States District Judge

cm: All parties of record.
 Chief U.S. Magistrate Judge Susan Paradise Baxter